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IN THE
COURT OF APPEALS OF INDIANA

FELTON JONES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0601-CR-62
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Robinette, Master Commissioner
Cause No. 49G03-0505-FA-84228

October 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Felton Jones appeals his conviction following a bench trial for kidnapping, a class A felony.[1]

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

At approximately 10:00 p.m. on May 12, 2005, John Demmings drove his Chevy van to the home of his friend, Anarose Henry, located at 2936 Rural Avenue in Indianapolis. Demmings parked in the driveway, facing Henry's house. Demmings remained in his van, sitting in the driver's seat; Henry later came out of her house to talk with Demmings.

Approximately twenty or thirty minutes after Demmings arrived, Jones and Nakeya Williams pulled up behind Henry's house and went in Henry's house. Demmings recognized Jones because he had met him "[t]hree or four" times within the past month. (Tr. 19). Anthony Clay also arrived at Henry's house and went to the van, where he, Henry and Demmings talked. Later, Jones "walked out the house and walked around the side." (Tr. 12). Williams also left the house, walked over to the van and got into the front-passenger seat. Henry was standing outside the front-passenger door and Clay was standing behind her.

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[1] Ind. Code § 35-42-3-2.

They were talking when Demmings "heard a loud noise on the door, and [he] leaned to the side, and . . . looked out [his] window." (Tr. 14). "[N]ext thing," Demmings "got shot" in the abdomen, and "Jones was climbing in the driver's side" of the van. (Tr. 16, 19). Demmings did not see who shot him.

After he was shot, Demmings ended up in the back of the van. He was "not exactly sure how [he] got in the back of the van, but [he] remember[ed] being in the back of the van on [his] stomach." (Tr. 16). Jones "went in [Demmings'] pockets and was asking [him] about some money." (Tr. 19-20). Three hundred and fifty dollars were taken from Demmings' pocket, but Demmings did not see Jones actually take the money.

Jones told Demmings that he "was going to die tonight." (Tr. 21). Jones then "drove off in the van," with Demmings still in the back seat. (Tr. 21). Demmings sat up and tried to get Jones in a headlock. Demmings also grabbed at a gun Jones was holding in his right hand. Demmings and Jones "struggled for a minute." (Tr. 21). Jones bit Demmings on his right arm. Jones "threw the van in park," opened the door, and got out of the van, dragging Demmings out with him as Demmings still had Jones by the neck. (Tr. 22). Jones "pointed the gun at [Demmings] one more time" before both men "ran in two different directions." (Tr. 23). Jones had driven the van approximately "300 feet." (Tr. 75).

On May 25, 2005, the State charged Jones with Count 1, robbery, a class A felony; Count 2, kidnapping, a class A felony; Count 3, unlawful possession of a firearm by a serious violent felon, a class B felony; and Count 4, carrying a handgun without a license,

a class A misdemeanor. The State elevated Count 4 to a class C felony as Jones had a previous felony conviction.

The trial court held a bench trial on December 2 and 9 of 2005. The trial court found Jones guilty of Counts 2, 3 and 4, but merged Count 4 with Count 3. The trial court, however, found Jones not guilty of Count 1, explaining that Demmings "didn't see who shot him. He didn't see anybody take any money." (Tr. 113).

DECISION

Jones asserts the evidence is insufficient to sustain his conviction for kidnapping. Specifically, Jones argues that "[t]here is no evidence of force, threat of force, or hijacking the vehicle which are required to uphold a kidnapping conviction as charged by the State." Jones' Br. 8.

Our standard of review for sufficiency of the evidence is well-settled. We will neither reweigh the evidence nor judge the credibility of witnesses. Snyder v. State, 655 N.E.2d 1238, 1240 (Ind. Ct. App. 1995). We examine only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom, and, if there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Here, the State charged Jones with kidnapping pursuant to Indiana Code section 35-42-3-2(b)(2), which provides that "[a] person who knowingly or intentionally removes another person, by fraud, enticement, force, or threat of force, from one place to another . . . while hijacking a vehicle," commits kidnapping. Hijacking is "the exercising of

unlawful or unauthorized control of a vehicle by force or threat of force upon the vehicle's inhabitants." Wilson v. State, 468 N.E.2d 1375, 1378 (Ind. 1984).

In this case, Jones drove Demmings' van, while holding a gun in his hand, where Demmings could see it. This, along with Jones' statement that Demmings "was going to die tonight," (Tr. 21), was enough to constitute a threat of force. See State v. McKissack, 625 N.E.2d 1246, 1248 (Ind. Ct. App. 1993) (finding "inference of imminent threat of force is plausible" where gun is visible); Mendelvitz v. State, 416 N.E.2d 1270, 1273 (Ind. Ct. App. 1981) (finding, as to robbery, "[a]ny threat of force, conveyed by word or gesture, or by the brandishing of a gun, knife, or some other deadly weapon, will suffice"). Furthermore, during their struggle, Jones bit Demmings on the arm. This was evidence that Jones exercised unlawful or unauthorized control of Demmings' vehicle by force upon Demmings. Accordingly, we find sufficient evidence to sustain Jones' conviction.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.